United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: January 17, 2014

TO: Claude T. Harrell, Jr., Regional Director
Region 10

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: United Automobile Workers (Volkswagen Group of America)
10-CB-114152
10-CB-114170
10-CB-114184
10-CB-114187
10-CB-114216
10-CB-114221
10-CB-115280
10-CB-115311

536-2563-0100
536-2501-8000

These cases were submitted for advice as to whether the Union violated Section 8(b)(1)(A) of the Act by: (1) demanding recognition from the Employer without having a valid showing of majority support; (2) making misrepresentations when soliciting authorization cards, or relying on ambiguous cards or cards that were signed more than a year before the Union claimed majority status; and (3) telling employees who had revoked their authorization cards, and wanted the physical cards returned, that they would have to contact the Union's office and meet a Union representative who would destroy the cards in their presence. We agree with the Region that the Union did not violate the Act merely by claiming majority status and demanding recognition from the Employer, regardless of whether the Union had a valid showing of majority support. We further agree with the Region that the Union did not violate the Act in its solicitation or handling of authorization cards, as there is no evidence indicating any unlawful restraint or coercion.

FACTS

These cases arise in the context of an organizing campaign by the United Auto Workers (the Union) at the Chattanooga, Tennessee, manufacturing facility of Volkswagen Group of America (VWGA or the Employer). Since at least March 2012, the Union has been engaged in an organizing campaign at the Employer's Chattanooga facility.

The Union claims that it obtained majority status in an appropriate bargaining unit in July 2013, and does not deny that it demanded recognition from the Employer thereafter. The Employer has not agreed to recognize the Union based on its asserted majority support, and the parties have not entered into any neutrality agreement or other contractual arrangement.

The Charging Parties allege that the Union violated Section 8(b)(1)(A) of the Act by demanding recognition from the Employer, because they assert that the Union does not have a valid showing of majority support, by making misrepresentations when soliciting authorization cards, and by relying on ambiguous authorization cards and cards that were signed more than a year before the Union claimed majority status. None of these claims include any factual assertions that would indicate that any of the Union's conduct in the solicitation of cards would itself constitute unlawful restraint or coercion.[1] Nonetheless, the charges allege that the Union's alleged misrepresentations and solicitation of authorization cards was itself unlawful.

Two of the Charging Parties also claim that they revoked their authorization cards, and asked the Union to return the physical cards themselves. In a form letter and orally, the Union told the two employees that it would not represent to the Employer that the employees supported the Union after the date of their revocation, or thereafter rely on their cards in a showing of majority support. The Union did not directly address the employees' request to have the physical cards returned to them, but did say that the employees could contact the Union's office to make arrangements to meet a Union representative who would destroy the cards in their presence. In addition, the Union sent letters to all employees who had signed an authorization card, advising them of their right to revoke their authorization if they no longer supported the Union. The two employees took no further action to have their cards returned or destroyed.

The Region concluded that, even if the Charging Parties' assertions are true, no violation of the Act has been established. Solely for the purposes of these cases, we also shall assume that the Charging Parties' factual assertions regarding the solicitation and handling of the authorization cards are true.

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[1] In addition, the Charging Parties have not cited any Section 8(b)(1)(A) cases regarding the Union's alleged misrepresentations and solicitation of authorization cards, or any precedent suggesting that any of the asserted conduct regarding the solicitation of authorization cards was itself unlawful. Rather, the Charging Parties have cited cases that could arguably support its argument that the cards should be found invalid if used to establish majority support. See, e.g., *Luckenbach Steamship Co.*, 12 NLRB 1333, 1343-44 (1939); *Surpass Leather Co.*, 21 NLRB 1258, 1273 (1940); *Serv-U-Stores, Inc.*, 234 NLRB 1143, 1145 (1978).

ACTION

We agree with the Region that the Union did not violate the Act merely by claiming majority status and demanding recognition from the Employer, regardless of whether the Union had a valid showing of majority support. We further agree with the Region that the Union did not violate the Act in its solicitation or handling of authorization cards, as there is no evidence indicating any unlawful restraint or coercion.

It is well established that a union which does not have majority support in a bargaining unit violates Section 8(b)(1)(A) of the Act by accepting recognition from an employer as the exclusive bargaining representative of the unit's employees.[2] Such conduct violates the Act because a grant of exclusive bargaining status to a union selected by only a minority of employees thereby "impress[es] that agent upon the nonconsenting majority," and "because the union so favored is given 'a marked advantage over any other in securing the adherence of employees.'"[3]

Where there has been no grant of recognition by the employer, however, but instead only an unrequited demand for recognition by a union, there is no similar restraint or coercion of employees, even if the claim of majority support turns out to be false or the demand for recognition is made without a bona fide showing of majority support. We are aware of no Board or court case suggesting that the mere claim of majority support or demand for recognition is itself unlawful, and the Charging Parties have suggested none. In contrast, the Supreme Court has expressly held that, even where a minority union pickets to compel recognition, the union does not thereby violate Section 8(b)(1)(A).[4]

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[2] See, e.g., *Ladies' Garment Workers (Bernhard-Altmann Texas Corp.) v. NLRB*, 366 U.S. 731, 737-39 (1961).

[3] *Id.*, at 737. See also, e.g., *Ladies' Garment Workers (Bernhard-Altmann Texas Corp.) v. NLRB*, 280 F.2d 616, 621 (D.C. Cir. 1960) ("the recognition of the minority union is a fait accompli depriving the majority of the employees of their guaranteed right to choose their own representative"), affd. 366 U.S. 731 (1961).

[4] *NLRB v. Teamsters Local 639 (Curtis Bros.)*, 362 U.S. 274, 278-92 (1960). Of course, such picketing may violate Section 8(b)(7) of the Act, which prohibits recognitional picketing in certain specified circumstances. Section 8(b)(7), however, is solely directed at the picketing conduct itself, and does not prohibit an underlying demand for minority recognition.

Here, there has been no grant of recognition by the Employer. The Union's claim of majority status and its demand for recognition, by themselves, did not restrain or coerce employees in any way, whether they were supported by a bona fide showing of majority support or not. Therefore, we agree with the Region that the Union did not violate the Act merely by claiming majority status and demanding recognition from the Employer, regardless of whether the Union had a valid showing of majority support.

We further agree with the Region that the Union did not violate the Act in its solicitation of authorization cards, as there is no evidence indicating any unlawful restraint or coercion. Assuming, *arguendo*, the truth of the Charging Parties' factual assertions regarding the solicitation of the authorization cards, i.e., that the Union made misrepresentations when soliciting authorization cards, and is relying on ambiguous authorization cards and cards that were signed more than a year before the Union claimed majority status, these assertions do not establish a violation of the Act. That is, while some or all of these assertions, if corroborated, might invalidate some of the authorization cards, none of them allege any conduct that would constitute unlawful restraint or coercion. Indeed, the Charging Parties have not cited any Board or court cases suggesting that any of this conduct was itself unlawful. Rather, the Charging Parties have only cited cases that arguably support its argument that the cards should be found invalid. Therefore, we agree with the Region that these allegations should be dismissed.

Finally, we also agree with the Region that the Union did not violate the Act by telling employees who had revoked their authorization cards and wanted the physical cards returned that they could contact the Union's office to make arrangements to meet a Union representative who would destroy the cards in their presence. Significantly, in a form letter and orally, the Union assured the employees who revoked their authorizations that it would not represent to the Employer that the individuals supported the Union after the date of the revocations or thereafter rely on the cards in a showing of majority support. There is no evidence that the Union has subsequently done anything inconsistent with these assurances. In addition, the Union sent letters to all employees who had signed authorization cards, advising them of their right to revoke the cards if they no longer supported the Union. Thus, while the Union has advised employees that they would personally have to meet with a Union representative if they wanted the cards physically destroyed, all of the evidence supports the Union's position that it has fully vindicated the employees' right to revoke their authorizations.

For this reason, the Charging Parties' arguments analogizing the Union's conduct to union restrictions on resignation are inapposite.[5] Unlike cases finding restrictions on resignation unlawful because they restrain employees' right to refrain from union activity, the Union has fully acknowledged the revocation of the employees' authorizations, and there is no evidence that the Union has subsequently done anything inconsistent with its assurances.[6] The only issue here, then, is the custody and handling of the physical cards themselves, and not employees' right to refrain from supporting the Union by revoking the cards. Therefore, in the absence of any indication that the Union is misusing the revoked authorization cards in any manner, we agree with the Region that its handling of the cards does not restrain or coerce employees and does not violate the Act.

Accordingly, for the foregoing reasons, the Region should dismiss the charges in the instant cases, absent withdrawal.

/s/
B.J.K.

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[5] See, e.g., *Machinists Local 1414 (Neufeld Porsche Audi)*, 270 NLRB 1330, 1333 (1984) ("when a union seeks to delay or otherwise impede a member's resignation, it directly impairs the employee's Section 7 right to resign or otherwise refrain from union or other concerted activities").

[6] Even more inapposite is the Charging Parties' analogy to *Beck* objection procedures. See, e.g., *California Saw & Knife Works*, 320 NLRB 224, 236-37 (1995), enfd. 133 F.3d 1012 (7th Cir. 1998) (union unlawfully required objectors to use certified mail); *Electrical Workers Local No. 34*, 357 NLRB No. 45, slip op. at 2-3 (2011) (union unlawfully required annual renewal of objections without justification). In such cases, not only is the objection itself at issue, rather than the mere handling of a physical card, but the relevant standard of conduct is different -- the union must meet a duty of fair representation applicable only to incumbent unions vis-à-vis employees for whom they are the exclusive statutory representative. See, e.g., *Electrical Workers Local No. 34*, 357 NLRB No. 45, slip op at 7 ("the legal analysis in ascertaining a breach of a duty of fair representation is different from the analysis of a violation of a Section 7 right").